

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**KENNETH COZART, in his own right
and on behalf of others similarly situated;**

Plaintiff,

v.

**Civil Action No. 5:18-cv-00397
Honorable Judge Irene C. Berger**

**BLUESTONE INDUSTRIES, INC., and
JILLEAN L. JUSTICE, JAMES C. JUSTICE III,
JAMES T. MILLER, individually**

Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants, Bluestone Industries, Inc., Jillean L. Justice, James C. Justice, III, and James T. Miller, by counsel, John F. Hussell, IV, Andrew L. Ellis, John D. (Jody) Wooton, Jr., and the law firm of WOOTON, DAVIS, HUSSELL & ELLIS, PLLC, hereby answer the Amended Complaint in the above-styled civil action as follows:

1. Answering Paragraph 1 of the Amended Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.
2. Answering Paragraph 2 of the Amended Complaint, Defendants admit the allegations contained to therein.
3. Answering Paragraph 3 of the Amended Complaint, Defendants admit the allegations contained to therein.

4. Answering Paragraph 4 of the Amended Complaint, Defendants admit the allegations contained to therein

5. Answering Paragraph 5 of the Amended Complaint, Defendants admit the allegations contained to therein.

6. Answering Paragraph 6 of the Amended Complaint, Defendants state that the allegations contained therein are not of factual nature, but are statement of legal conclusions, and are not appropriate for admission or denial.

7. Answering Paragraph 7 of the Amended Complaint, Defendants admit that Kenneth Cozart was an employee of Bluestone Industries, Inc. Defendants deny the remaining allegations set forth in Paragraph 7.

8. Answering Paragraph 8 of the Amended Complaint, Defendants admit the allegations contained to therein.

9. Answering Paragraph 9 of the Amended Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

10. Answering Paragraph 10 of the Amended Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

11. Answering Paragraph 11 of the Amended Complaint, Defendants admit that Bluestone Industries, Inc. paid Kenneth Cozart the wages owed him. Defendants deny the remaining allegations set forth in Paragraph 11.

12. Answering Paragraph 12 of the Amended Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

13. Answering Paragraph 13 of the Amended Complaint, Defendants state that the allegations contained therein are not of factual nature, but are statement of legal conclusions, and are not appropriate for admission or denial.

14. Answering Paragraph 14 of the Amended Complaint, Defendants state that the allegations contained therein are not of factual nature, but are statement of legal conclusions, and are not appropriate for admission or denial.

15. Answering Paragraph 15 of the Amended Complaint, Defendants deny the allegations contained to therein.

16. Answering Paragraph 16 of the Amended Complaint, Defendants deny the allegations contained to therein.

17. Answering Paragraph 17 of the Amended Complaint, Defendants deny the allegations contained to therein.

CLASS ACTION ALLEGATIONS

18. Answering Paragraph 18 of the Amended Complaint, Defendants deny the allegations contained to therein.

19. Answering Paragraph 19 of the Amended Complaint, Defendants deny the allegations contained to therein.

20. Answering Paragraph 20 of the Amended Complaint, Defendants deny the allegations contained to therein.

21. Answering Paragraph 21 of the Amended Complaint, Defendants deny the allegations contained to therein.

22. Answering Paragraph 22 of the Amended Complaint, Defendants deny the allegations contained to therein.

23. Answering Paragraph 23 of the Amended Complaint, Defendants deny the allegations contained to therein.

24. Answering Paragraph 24 of the Amended Complaint, Defendants deny the allegations contained to therein.

25. Answering Paragraph 25 of the Amended Complaint, Defendants deny the allegations contained to therein.

26. Answering Paragraph 26 of the Amended Complaint, Defendants deny the allegations contained to therein.

27. Answering Paragraph 27 of the Amended Complaint, Defendants deny the allegations contained to therein.

28. Answering Paragraph 28 of the Amended Complaint, Defendants deny the allegations contained to therein.

Defendants deny the allegations set forth in the unnumbered paragraphs of the Amended Complaint and in Plaintiff's prayer for relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery under the doctrine of accord and satisfaction, the Plaintiff having accepted payment in full for services rendered.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery under the doctrine of estoppel, the Plaintiff having accepted payment in full for services rendered.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery due to payment.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery due to the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Defendants hereby give notice that they intend to rely upon any other defenses that may become available or appear during the discovery proceedings in this case and hereby reserve the right to amend their Answer to assert any such defenses.

WHEREFORE, Defendants, Bluestone Industries, Inc., Jillean L. Justice, James C. Justice III, and James T. Miller, respectfully request that this Court dismiss the claims set forth in the Amended Complaint, with prejudice, and award Defendants all costs and attorneys' fees and any other relief this Court deems proper.

Defendants demand a jury trial on all issues so triable.

**BLUESTONE INDUSTRIES, INC., and
JILLEAN L. JUSTICE, JAMES C.
JUSTICE, III, and JAMES T. MILLER,
individually,**

By Counsel

/s/ John F. Hussell, IV

John F. Hussell, IV - WV Bar No. 6610

Andrew L. Ellis - WV Bar No. 10618

John D. (Jody) Wooton, Jr. - WV Bar No. 10512

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Counsel for Defendants

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CERTIFICATE OF SERVICE

John F. Hussell, IV, Andrew L. Ellis, John D. (Jody) Wooton, Jr., and the law firm of WOOTON, DAVIS, HUSSELL & ELLIS, PLLC, hereby certify that the “**ANSWER TO AMENDED COMPLAINT**” was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants, and that a copy of said documents were sent by first-class mail, postage prepaid, addressed to the following:

Anthony J. Majestro, Esquire
Powell & Majestro, PLLC
405 Capitol Street, Suite P1200
Charleston, WV 25301

Anthony M. Salvatore, Esquire
Hewitt & Salvatore, PLLC
204 North Court Street
Fayetteville, WV 25840

Done this 4th day of June, 2018.

/s/ John F. Hussell, IV
John F. Hussell, IV - WV Bar No. 6610